

One-Year Review of the Massachusetts Smoke-Free Workplace Law

M.G.L. Chapter 270, Section 22

July 5, 2004 – June 30, 2005

SUMMARY

As required by statute, the Massachusetts Department of Public Health (MDPH) must report to the Legislature regarding implementation of the Smoke-Free Workplace Law of 2004. Implementation has been completed, and processes are in place to assure that the statute's requirements continue to be met. To date, the Massachusetts Department of Public Health has:

- established a Commission to assist in implementation;
- developed and recommended regulations that the Public Health Council promulgated;
- established a compliance and information line;
- documented and followed up all registered complaints;
- provided technical assistance to local Boards of Health (BOH);
- funded compliance inspections conducted by local Boards of Health;
- conducted survey of local BOH to prepare for January, 2006 deadline for reporting fines and citations.

These successes were achieved without the negative economic impact that some had feared. Based on formal inspections, complaint driven inspections and surveillance inspections, over 90% of workplaces throughout the Commonwealth are complying with the law.

The Massachusetts Department of Public Health continues to work on further refining the definition of "outdoor seating open to the air," enforcement of the membership organization exemption, and resolving issues regarding smoking bars, outdoor smoking, and smoking at in-patient mental health units. The MDPH expects to continue to work on each of these during the next year.

INTRODUCTION

On June 18, 2004, the Massachusetts Smoke-Free Workplace Law (M.G.L. Ch. 270, §22) was signed by Governor Romney and went into effect on July 5, 2004. This law replaced the 1988 Massachusetts Clean Indoor Air Law by mandating that enclosed workplaces with one or more employees be smoke-free. The intent of the Smoke-Free Workplace Law (SFWL) is to protect workers in enclosed workplaces from secondhand smoke exposure. The full text of the law and additional information are available at www.mass.gov/dph/mtcp.

As required by Ch. 270, §22, this report is to inform the Legislature about the implementation of the law. This document will describe the Massachusetts Tobacco Control Program (MTCP) and the Commission that approved regulations for implementation of the law. Additionally, this review will describe the effectiveness of the law, compliance rates, and additional challenges in ensuring that all workplaces in the Commonwealth are smoke free.

MASSACHUSETTS TOBACCO CONTROL PROGRAM

The MTCP is a division of the Massachusetts Department of Public Health, Center for Community Health. MTCP's primary purpose is to improve public health for all Massachusetts residents by reducing death and disability caused by tobacco use. The MTCP has four strategies that address this primary goal: (1) protecting the public from exposure to secondhand smoke; (2) preventing youth from starting to use tobacco products; (3) encouraging and helping current tobacco users to quit; and (4) identifying and eliminating tobacco-related disparities among different populations. MTCP is responsible for coordinating the implementation of the SFWL statewide.

To meet these objectives, MTCP currently funds 22 Boards of Health (BOHs) that serve 173 municipalities. These local BOHs and associated tobacco control programs are funded to enforce the tobacco laws that prevent illegal sales of tobacco products to minors. Additionally, MTCP funds eight Community Mobilization Networks (CMNs) that help local organizations accomplish MTCP goals at the local level. CMNs provide workplace education and monitor implementation of SFWL by inspecting bars and restaurants. There are also five statewide programs funded by MTCP to implement the strategies described above. These statewide programs include the Massachusetts Association of Health Boards, the Massachusetts Health Officers Association, the Massachusetts Municipal Association, the Try to Stop Tobacco Resource Center, including the 1-800-TRYTOSTOP quit line, and the University of Massachusetts Medical School. More information is available at <http://www.mass.gov/dph/mtcp> and www.trytostop.org.

In addition to these MTCP-funded programs, MTCP staff directly oversee the implementation and enforcement of the SFWL. Specifically, MTCP staff assists local BOHs and health departments with their enforcement activities. Additionally, MTCP developed fact sheets to address issues relating to the SFWL and provided education about the law to local businesses. MTCP staff responds to callers who report possible violations or who request information. Finally, databases relating to complaints and compliance checks are all maintained and analyzed by MTCP staff. Following a complaint, a letter, signed by the Associate Commissioner of DPH, is mailed to the workplace along with an information packet. A copy of the complaint is faxed to the local board of health for the board to investigate.

SMOKE-FREE WORKPLACE LAW COMPLAINT AND INFORMATION LINE (1-800-992-1895)

The Massachusetts Tobacco Control Program established a toll-free complaint and information phone line, 1-800-992-1895, in July, 2004. The number was published on fact sheets and appeared in newspaper and radio advertisements during June and July. The number was also printed on no-smoking signs that were distributed to businesses. Some individuals with questions and complaints called the MTCP business line (617-624-5900) as well as the toll-free number. For the purpose of this report, these calls are combined. In addition to the complaint and information

line, a complaint form was posted on the Department of Public Health web site. The complaint form could be faxed or mailed. More than 90% of the complaints have been received by telephone.

During July 2004, 742 calls were documented. Complaints about alleged violations accounted for 18% of the calls. Approximately 10% of the calls were prank phone calls. The majority of the calls were inquiries from workplaces, private clubs, local BOHs and the general public. Callers from workplaces included owners, attorneys and human resource professionals. As shown in Figure 1, the number of calls to the complaint and information line have continued to decrease with 29 inquiries received in June 2005. A summary of these inquiries can be found in Figure 2, which highlights the type of calls that were made to the information and complaint line. In addition to the calls made to MTCP, many businesses and members of the general public called the local BOHs directly. There is no accurate way to document these calls. During the month of July, 1,968 individuals visited the MTCP web pages at www.mass.gov/dph/mtcp.

Figure 1: Calls to the SFWL Complaint and Information Line

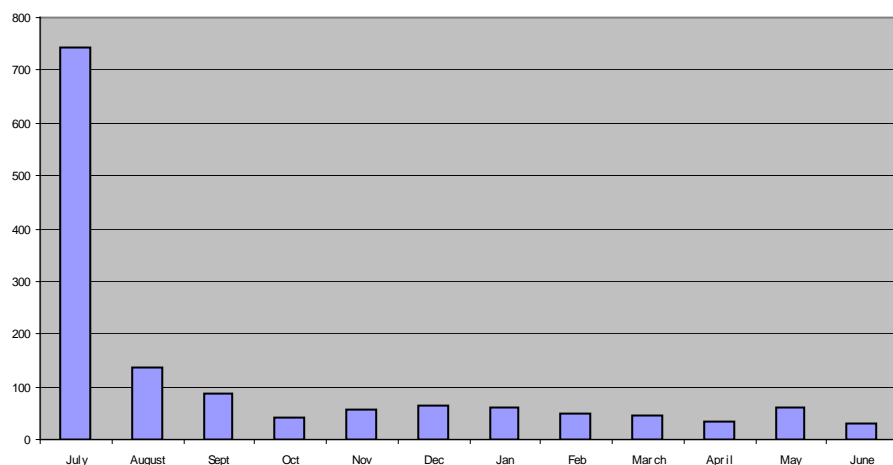
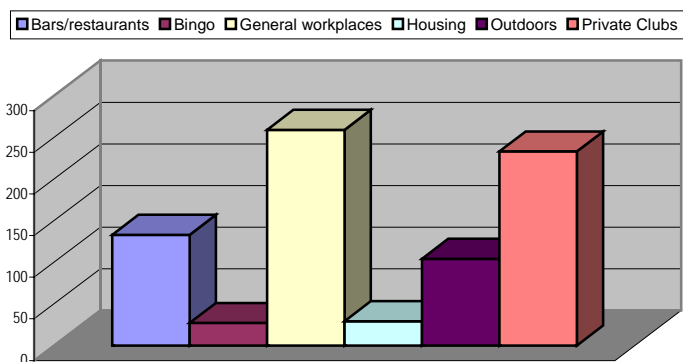


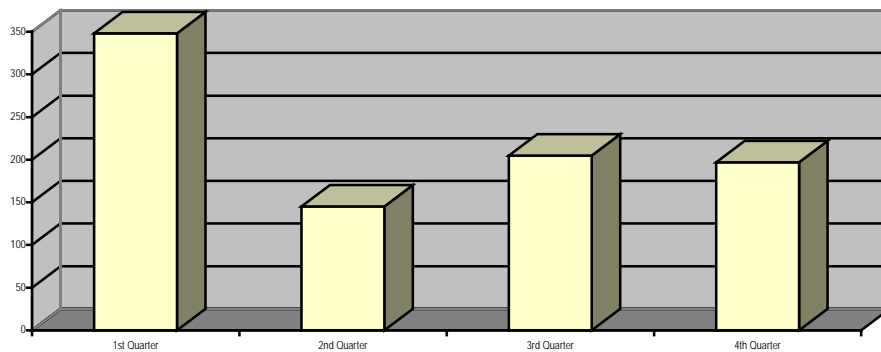
Figure 2: Inquiries to MTCP by Establishment Type



COMPLAINTS ABOUT VIOLATIONS OF THE SMOKE-FREE WORKPLACE LAW

The 22 local BOHs that are funded by MTCP submit a monthly activity report to MTCP that documents complaints made directly to the BOHs. MTCP received 372 direct complaints and 563 were made via local BOHs and compiled by MTCP staff. When a complaint is made directly to MTCP, local BOHs are notified so that they can investigate the grievance. Figure 3 provides information about these complaints.

Figure 3: Complaints Reported to MTCP between July 5, 2004-June 30, 2005



TRAINING AND TECHNICAL ASSISTANCE TO LOCAL BOARDS OF HEALTHS

Along with the Massachusetts Association of Health Boards, the Massachusetts Health Officers Association, and the Massachusetts Municipal Association, the MTCP provided training and technical assistance to local boards of health for implementing the SFWL. Specifically, 89 BOHs received one-on-one technical assistance on the SFWL and related topics including smoking in private clubs. Five BOHs were given legal technical assistance regarding passing local regulations to ban smoking in private clubs. MTCP provided 20 regional trainings to local BOHs; 339 individual staff members attended these trainings. Additionally, 30 business owners attended a forum on the SFWL in Worcester.

INSPECTIONS

Local BOHs and health departments that are funded by MTCP are required to make random inspections of businesses to ensure compliance with the SFWL. Additionally, local BOHs and health departments follow up on reports of violations by inspecting specified businesses. Between July 5, 2004, and June 30, 2005, there were 5,356 random inspections made by MTCP-funded local BOHs. In these inspections, there was a 91.25% compliance rate; of the 5,356 inspections, only 469 violations were noted (e.g., active smoking, missing signage, or smoke odor). The most common response to these violations was a warning (in 430 cases). In the other 39 cases, a ticket was issued.

MTCP notified local BOHs (both MTCP funded and non-funded) regarding 372 complaints; MTCP received reports about 340 follow-up inspections. In the follow-up inspections, 43 violations were noted with 33 warnings and ten tickets issued. This rate of violation represents an 87% compliance rate. This figure is slightly lower than the compliance rate observed in random inspections, but is a significant improvement given that these inspections were motivated by *specific* complaints.

In addition, the Massachusetts Association of Health Boards and MTCP-funded Community Mobilization Networks monitored compliance with the law in 42 municipalities. Staff conducted on-site observations of bars and restaurants on Thursday-Saturday nights between 7pm and midnight. They observed 515 establishments and found an 88% compliance rate. In 22 establishments there was active smoking and in 41 establishments there was an observable smoke odor.

SURVEY OF BOARDS OF HEALTH: FINES AND CITATIONS (*July-December 2004*)

The SFWL (*M.G.L. Ch. 270, §22*) states that beginning January 1, 2006, local BOHs are required to report to MTCP the number of fines and citations that have been issued, and the total value of the fines. In order to better understand implementation of the law, MTCP began surveying the local BOHs one-year earlier than required, in January 2005. Of the 351 local BOHs or health departments that were mailed a survey, 166 responded (47.3%). The majority of the respondents reported issuing warnings only, but 21 boards of health issued 53 citations and 32 fines in response to violations; 19 of these citations/fines were issued by the city of Boston. This survey included tickets and citations issued between July 5, 2004-December 31, 2004.

HARVARD SCHOOL OF PUBLIC HEALTH EVALUATION OF THE SMOKE-FREE WORKPLACE LAW

Faculty of the Harvard School of Public Health presented a studyⁱ to the Department of the impact of the SFWL on air quality, observed compliance, and economic effect of the law. The team measured air quality in 27 bars and restaurants before and after the ban. Air quality was significantly better after the law was enacted. The analyses of compliance revealed that one patron was smoking in one establishment (a compliance rate of 96.3%), and this patron was asked to extinguish the cigarette. The economic analyses demonstrated that inflation-adjusted meals sales taxes were unchanged by the law, and there was no change in alcoholic-beverages excise tax collections. Finally, their analyses indicated a slight *increase* in the number of people employed in food services and drinking places *after* the implementation of the law. Because of a high compliance rate, the law has had a positive effect on indoor air quality with no adverse economic impact. The report can be viewed at http://www.hsph.harvard.edu/php/pri/tcrtp/Smoke-free_Workplace.pdf.

THE COMMISSION

The Smokefree Workplace Law required the formation of a Commission to assist in the implementation of the law. The Commission is charged with reviewing the compliance and outcome data to evaluate the impact of the law. The Commission is required to report to the Joint Committee on Public Health (previously the Joint Committee on Health Care) and the Commissioner of Public Health within 16 months of the date SFWL went into effect.

The Commission is comprised of 40 representatives from local BOHs, public health groups (such as Tobacco Free Mass), unions (such as the Massachusetts AFL-CIO), business organizations (such as the Massachusetts Chapter of the National Federation for Independent Businesses; Associated Industries of Massachusetts), business associations (such as the Massachusetts Restaurant Association; Massachusetts Licensed Beverage Association), and research organizations (such as UMASS Center for Survey Research; Harvard School of Public Health). The Commission met twice in 2004 and met again in June 2005. Additionally, there were two workgroup meetings in November 2004.

During the Commission meetings, implementation strategies, issues and regulations were discussed. One issue, which was raised by several members, related to a desire to prohibit smoking in membership associations. These discussions resulted in a recommendation that Christine Ferguson, Public Health Commissioner at the time, send a letter to all boards of health explaining the resources that were available at the state level to assist and support local boards that wished to pass stricter local regulations.

DEPARTMENT OF PUBLIC HEALTH (DPH) REGULATIONS

In order to help enforce the Smokefree Workplace Law, DPH worked with the Commission to develop regulations. The draft regulations were presented to Public Health Council in May, 2005. A public hearing was held on June 3, 2005, to receive feedback from the public regarding the regulations. Although there was no opposition to the regulations, *per se*, a few individuals expressed opposition to the SFWL itself. Objections to the SFWL fell into two categories: business problems and enforcement problems. Specifically, some bar owners reported a perception that some customers are going to member associations rather than to bars or that they are losing business to package stores. Local boards of health requested guidance on definitions of membership in private clubs and outdoor seating. The DPH regulations clarify the definition of membership in private clubs and specify the criteria an outdoor space must meet in order to allow smoking. The Commission approved, and the Public Health Council voted to promulgate these regulations, which went into effect August 26, 2005.

STATUS OF IDENTIFIED ISSUES

All evidence indicates that the SFWL and the associated regulations have been effective in reducing exposure to second hand smoke. Workplaces in the Commonwealth are highly compliant with the law. Compliance rates range from 87% to 96% depending on the survey. There still remain, however, a few areas of concern: outdoor seating in the hospitality industry, membership organizations, smoking bars, business-operated vehicles, outdoor smoking in general, in-patient mental health units, and maximizing use of smoking cessation resources.

Outdoor Seating in the Hospitality Industry. A small number of businesses created outdoor smoking areas in their establishments that were partially enclosed with tent structures and walls, causing smoke to get trapped inside. Many hospitality businesses and local boards of health contacted MTCP seeking guidance on the definition of outdoor seating. The DPH regulations developed by the Commission address this issue by providing clear definitions and specifications regarding outdoor seating.

Membership Organizations. Private clubs, including veterans' associations and charitable organizations, are exempt from the SFWL under certain conditions. Specifically, a private club is exempt if it is a non-profit club and is not open to the public. If a membership association is only serving its members and is not open to the public, it is exempt from the law and associated regulations. The MTCP and local BOHs, however, have received many calls from restaurant and bar owners who perceive these membership associations to be operating as public bars rather than private clubs. Some private clubs have created associate or auxiliary memberships in order to accommodate members of the public. Other clubs have "invited guests" who are not accompanied by members. Although the issue of what constitutes membership is complex, the DPH regulations define "membership association" consistent with the intent of the SFWL and the policies of the Alcoholic Beverage Control Commission.

Smoking Bars/Cigar Bars. The Department of Revenue (DOR) promulgated regulations to allow smoking bars or cigar bars to apply for a smoking bar permit. One permit was revoked by DOR after the business failed to demonstrate that 51% of its income was from the sale of tobacco products. As of the summer of 2005, permits have been issued for smoking bars located in Worcester, Sudbury and Hyannis. In addition, the City of Boston issued permits to five smoking bars.

Vehicles. In order to answer questions about smoking in vehicles, the Commission reviewed guidelines regarding smoking in vehicles. MTCP has published fact sheets to publicize these guidelines. All public transportation vehicles, including taxicabs, must be smoke-free. All vehicles owned by a city, town, county or the state must be smoke-free at all times. Similarly, a private vehicle that is used by more than one employee must be smoke-free.

Outdoor Smoking Areas in General. MTCP has received numerous inquiries from businesses about smoking outdoors. The law does not require a "buffer zone" but does state that smoke cannot migrate back into the building. As a result, placement of an outdoor smoking area is dependent on the type of structure and other unique variables. Workplaces have contacted MTCP for guidance around outdoor smoking areas. MTCP has developed a fact-sheet to provide guidance on this issue.

In-Patient Mental Health Units. The law provides for an exemption for in-patient acute substance abuse treatment facilities but does not provide an exemption for in-patient mental health units. The majority of these units were voluntarily smoke-free prior to July 5, 2004. At that time, nine hospitals had in-patient mental health units that had a smoking room inside the facility. MTCP organized a meeting with staff from the Massachusetts Department of Mental Health, the Massachusetts Hospital Association and the Massachusetts Association of Behavior Health Systems to discuss issues related to these units. All nine hospitals have designated outdoor smoking areas that comply with the state law.

Smoking Cessation Efforts. MTCP has received calls from workplaces seeking resources to support employees who want to quit smoking. MTCP is working with many health plans in Massachusetts to provide information and assistance to workplaces. The Try-to-Stop Tobacco Resource Center, which is funded by MTCP, offers phone (1-800-879-8678) and web-based services (trytostop.org) to smokers who are seeking information and support around quitting smoking. Additionally, the MTCP is a founding member of the Massachusetts Consortium for a Healthy Workforce. This organization, which includes corporations, government organizations, nonprofit policy and research institutions, and labor organizations, promotes and supports work site health initiatives. The consortium is addressing smoking cessation in a number of ways including working with employers to increase employees' use of cessation services, integrating cessation into existing wellness plans, and increasing cessation services that are covered by purchased health-care plans.

FACT SHEETS AVAILABLE ON WWW.MASS.GOV/MTCP

- Buffer zones and shelters
- Establishments with liquor licenses
- Membership association exemption
- Municipal buildings and vehicles
- Schools
- Smoking bar / cigar bar
- Vehicles

LOCAL BOARDS OF HEALTH REGULATIONS

Several local BOHs passed local regulations since July 5, 2004, to ban smoking in all membership clubs. By December 2004, twenty-nine municipalities required private clubs to be 100% smoke-free, and six municipalities had regulations that were more restrictive than the state law. Additional municipalities were in the process of holding hearings on proposed regulations banning smoking in private clubs. In December 2004, three private clubs in Athol sued the Athol Board of Health alleging that a board of health regulation that prohibited smoking in private clubs was unlawful and unenforceable. Judge McCann of the Worcester Superior Court ruled in favor of the private clubs, holding that the SFWL prohibiting smoking preempts cities and towns from further regulating smoking. The Athol Board of Health successfully petitioned to the Supreme Judicial Court for direct appellate review. Oral arguments were heard on November 9, 2005.

Following the decision of the Worcester Superior Court, several boards of health, including the city of Chicopee, decided to formally rescind their local regulations banning smoking in private clubs. Other boards of health, including Boston, Cambridge, and Quincy, have continued to enforce local regulations or ordinances prohibiting or further restricting smoking in private clubs.

GOING SMOKE-FREE IS THE DIRECTION OF THE FUTURE

Massachusetts was the sixth state in the nation to pass a smoke-free workplace law. Currently, there are seven other states with similar laws (California, Maine, Delaware, New York, Rhode Island, Connecticut, and Washington). Additionally, there are several countries that have prohibited smoking in indoor workplaces, including the Republic of Ireland, Italy, Norway, and New Zealand.

CONCLUSION

It has been 16 months since the Massachusetts Smoke-Free Workplace law went into effect. This report highlights the activities of the Massachusetts Tobacco Control Program to implement and enforce this law. Compliance rates are extremely high, with only a few business owners complaining that their businesses are being adversely affected. Additionally, a Harvard School of Public Health study reported that air quality in bars and restaurants is significantly improved. The Harvard study also showed that the law has had no discernible negative economic impact statewide.

ⁱ Connolly GN, Carpenter C, Alpert HR, Skeer M, and Travers, M. (2005). Evaluation of the Massachusetts Smoke-free Workplace Law: A Preliminary Report. Paper presented to the Harvard School of Public Health Tobacco Control Working Group. April 4, 2005.